

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Connor Elliott and Amanda Elliott, §
individually and as next friends of §
N.E., their child and a minor, §

Plaintiffs, §

v. §

The United States of America, §

Defendant. §

No. 1:19-cv-427-LY

APPLICATION TO ESTABLISH
THE N.E. SPECIAL NEEDS TRUST

NOW COME CONNOR ELLIOTT and AMANDA ELLIOTT, as next friends of N.E., a minor and an incapacitated person as defined in Section 142.007 of the Texas Property Code (hereinafter N.E. is referenced to as the “*Proposed Beneficiary*”), and Walter “Chip” Evans IV, as guardian *ad litem* for the Proposed Beneficiary (hereinafter “*Applicants*”), and would alert the Court that DOJ has approved funding of this settlement. Applicants would also move the Court pursuant to 42 United States Code Section 1396p(d)(4)(A), as amended August 10, 1993, by the Revenue Reconciliation Act of 1993, Pub. L. 103-55, and pursuant to Texas Property Code Section 142.005 to enter a decree establishing a special needs trust for the sole benefit of the Proposed Beneficiary and would respectfully show the Court the following.

Applicants conferred with the United States and the Government takes no position on this matter.

I.

Applicants, Connor Elliott and Amanda Elliott, are the biological father and mother of the Proposed Beneficiary, and they have entered their appearances in this cause as next friends of the Proposed Beneficiary.

II.

Applicant, Walter Philmore “Chip” Evans IV, has been appointed by this Court as guardian *ad litem* to represent the interests of the Proposed Beneficiary, and he has entered his appearance in this cause.

III.

The Proposed Beneficiary was born on November 24, 2015, and is a minor, age 5, as of the filing of this Application. The Proposed Beneficiary is represented by Applicants as next friends. The Proposed Beneficiary is a disabled person as defined in the Social Security Act, Section 1614(a)(3), 42 United States Code Section 1382C(a)(3).

IV.

There is no court-appointed guardian of the estate of the Proposed Beneficiary, and there is no proceeding pending for the appointment of such guardian.

V.

The parties have reached a settlement in this cause in favor of the Proposed Beneficiary consisting of a lump-sum payment plus future periodic payments (the “*Settlement Proceeds*”) within the meaning of Sections 104(a)(2) and 130 of the Internal Revenue Code of 1986, as amended.


VI.

Applicants will show this Court that it would be in the best interest of the Proposed Beneficiary for a portion of the Settlement Proceeds to be held, invested, administered, and distributed by Capital First Trust Company, a financial institution (as defined by Section 201.101, Texas Finance Code) that has trust powers and exists and does business under the laws of the State of Texas or another state in the United States, as a special needs trust for the sole benefit of the Proposed Beneficiary in accordance with the provisions of 42 United States Code Section 1396p(d)(4)(A), as amended by the Revenue Reconciliation Act of 1993, Pub. L. 103-55. Therefore, Applicants move the Court pursuant to Section 142.005 of the Texas Property Code to enter a decree establishing the N.E. Special Needs Trust for the sole benefit of the Proposed Beneficiary, having the terms and provisions set forth in Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

WHEREFORE, Applicants pray that upon hearing:

1. The Court enters a decree establishing the N.E. Special Needs Trust for the sole benefit of the Proposed Beneficiary, having the terms and provisions set forth in Exhibit "A", and grant such other and further relief as the Court may deem proper.
2. The Court enters a decree appointing Capital First Trust Company to serve as the Trustee of the N.E. Special Needs Trust; and
3. The Court grants such other and further relief as the Court may deem proper.

Respectfully submitted,



CONNOR ELLIOTT,
as Next Friend of N.E., a Minor



AMANDA ELLIOTT,
as Next Friend of N.E., a Minor

s/ Walter "Chip" Evans

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Guardian *Ad Litem* for N.E., a Minor

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s/ Jesse Reiter

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2022, ~~2021~~, a true and correct copy of the foregoing instrument was served in accordance with the Federal Rules of Civil Procedure upon all interested parties.

s/ Walter "Chip" Evans
WALTER PHILMORE "CHIP" EVANS IV